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Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

Report of the United Nations Mission to observe a referendum on self-determination of Tokelau, February 2006

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I. Introduction

1. On 24 June 2005, the Ulu of Tokelau (the Titular Head of Tokelau) addressed a meeting of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples. At the meeting, he extended an invitation to the Special Committee to attend the upcoming referendum in Tokelau, the formal act of self-determination on Tokelau's political future. Subsequently, by a letter dated 21 October 2005, the Permanent Representative of New Zealand to the United Nations formally invited the Chairman of the Special Committee to observe the referendum. By a letter dated 24 October 2005, the Chairman advised the Permanent Representative of New Zealand that he would be unable to travel during the period of the referendum owing to other commitments, but indicated that he would consult other members of the Special Committee with the aim of designating a representative to represent him. Following these consultations, the Chairman appointed Ambassador Robert Aisi of Papua New Guinea to represent him. Ambassador Aisi was accompanied by Lone Jessen of the Decolonization Unit of the Department of Political Affairs. The formal election monitoring team comprised Kendra Collins of the Electoral Assistance Division of the Department of Political Affairs and Walter Rigamoto, an elections consultant who is also the Fijian Ombudsman. All were present throughout the referendum process, which took place from 11 to 15 February 2006.

II. Background

2. Since 1926, Tokelau has been a Non-Self-Governing Territory administered by New Zealand. Over the past 30 years, there have been a series of discussions and consultations, as well as ongoing experimentation with different governance and public service systems, as Tokelau struggled with the question of its future political status.[1]

3. In November 2003, Tokelau's General Fono (the national representative body) took a formal decision, by consensus and with the support of all three Village Councils, to endorse self-government in free association with New Zealand as the choice to be actively explored with the New Zealand Government. That decision was based on a recommendation of the Special Constitutional Committee, which in turn was based on extensive consultations held on each atoll earlier in that year. Agreement on the steps to be taken to give effect to this decision was reached at the General Fono held in January 2004. These included a series of discussions with senior officials in both Wellington and Apia; consideration of the situation in Tokelau by the Special Committee at the Committee's Pacific Regional Seminar, held in Papua New Guinea in May 2004, and during its substantive sessions held in June 2004 and June 2005; at the General Fono and during village deliberations; at several meetings held in Tokelau and Samoa, which involved the Administrator; during a visit by the New Zealand Prime Minister to Tokelau in August 2004; at

[1] For more information on the location, history, political, economic and social conditions of Tokelau, see the most recent working paper prepared by the Secretariat (A/AC.109/2006/10). All working papers on Tokelau can be found on the United Nations decolonization website (www.un.org/depts/dpi/decolonization/).

meetings with Tokelau's constitutional adviser, Professor Tony Angelo, and Tokelau's senior officials and political leadership; and at a number of meetings with Tokelau's overseas communities in New Zealand, Samoa, American Samoa, Hawaii and Australia. During her visit to Tokelau, the Prime Minister welcomed Tokelau's decisions on its future political status and assured Tokelau of New Zealand's ongoing friendship and support as it moved towards the act of self-determination.

4. At its meeting in August 2005, the General Fono approved the text of a draft treaty of free association between Tokelau and New Zealand as the basis for an act of self-determination. It also appointed a translation committee and a referendum commission. Subsequently, in November 2005, the General Fono approved the translations of the draft constitution and draft treaty,[2] approved the draft referendum rules (including a closing date of 23 December 2005 for voter registration) and set from 11 to 15 February 2006 as the dates for the referendum. It also agreed that an overall majority of two thirds of the valid votes cast in a national poll would be required for a change in Tokelau's status and decided that the voting should take place sequentially in Apia and on the three atolls.

III. Preparations undertaken for the holding of the referendum

5. As mentioned above, during the meeting of the General Fono in August 2005, a set of rules for the referendum was enacted. According to the Rules, the referendum was to be conducted by a referendum commission. The commission was appointed in October 2005, with three-member representation from each of the three islands, comprising the Faipule (the representative of each village), the Pulenuku (the mayor of each village) and one other village representative. In accordance with the Rules, the Commission was responsible for supervising the compilation of voter rolls, determining any appeals on the voter registration, monitoring compliance with the Rules during the preparation and holding of the referendum, issuing instructions for the conduct of voting, and confirming and announcing the results of the referendum.[3] The Office of the Council of Ongoing Government of Tokelau (hereinafter referred to as the Council) acted as the secretariat for the Commission, providing support for administrative actions and managing the coordination of the process. The Commission received some external technical support in the organization of the referendum from the New Zealand Election Commission.

6. The Commission met on 13 and 14 November and presented a report to the General Fono on 15 December 2005, at which it was confirmed that the referendum planning would proceed on the basis of voting in four locations on 11 February in Apia and from 13 to 15 February 2006 on the islands of Atafu, Nukunonu and Fakaofo.

7. On 16 and 17 December 2005, voting instructions, information on the conduct of voting and the counting procedures were provided for approval to members of the Referendum Commission. These documents had been prepared with the assistance of officers of the Electoral Office in New Zealand.

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[2] Copies of the draft constitution and draft treaty are available on www.tokelau.org.nz.

[3] See "Self-Determination Referendum Rules 2005", art. 4. A copy of the Rules is available at www.tokelau.org.nz.

IV. Pre-referendum activities of the Mission

8. The four-person team from the United Nations arrived in Apia on 8 February 2006. On 9 February, the team met with Falani Aukuso, the Adviser to the Council for Ongoing Government, and Jovilisi Suveinakama, Legal Adviser, Tokelau Public Service, who was also in charge of organizing the referendum, and was briefed on the preparations for the referendum, as related above. The team was informed that, to ensure voter education, the draft constitution and draft treaty, which comprised the referendum package, had been distributed to every household in Tokelau and was made available for collection in Apia. Other forms of voter education were conducted in the lead up to the polling days, covering both the mechanics and the logistics of the referendum. In December 2005, the secretariat of the Referendum Commission conducted discussions on each island about the referendum process. The purpose of the visits was to provide information and assistance to all eligible voters. From 5 to 24 January 2006, workshops on the voting process were conducted at all registration centres. Each of the villages also conducted its own voter education workshops, with Nukunonu conducting four. On 24 January 2006, all registered voters were sent a further self-determination package.

9. Also discussed at the meeting was the issue of overseas votes. According to the Rules, Tokelauans who reside overseas were not entitled to vote unless certain criteria were met. This decision came about after substantial and significant discussion and was finally reached at a meeting of the General Fono. The justification for the decision was that, if the vote were open to all Tokelauans, irrespective of any residential requirement, not only would the referendum logistically be very difficult to organize but it could also override the voices of those who did reside in Tokelau. The estimated number of Tokelauans living overseas is 12,000, while the total population of Tokelau is around 1,500. Thus, it was plausible that if all Tokelauans overseas voted, they would determine the future of those who actually resided on the islands. Some overseas Tokelauans took issue with this decision in a number of media articles prior to the event. It is not clear whether the voting itself was affected by this concern.

V. Actual referendum undertakings

10. The United Nations team was present for voting on each of the four days of polling, on 11 February 2006 in Apia (for eligible Tokelauans based in Samoa), and on 13, 14 and 15 February on the islands of Atafu, Nukunonu and Fakaofo, respectively. The polling stations were centrally located and clearly marked in all four locations. Voters were informed of the location of the polling station in information leaflets that were distributed directly to registered voters, as well as through the Tokelau Government website. Also, village leaders were asked to inform people of the location in advance of the event. Leaflets, which described how to vote and provided an illustration of what the voter would expect to see on the ballot paper, were made available to voters at the entrance to the polling station. The polling stations were open from 8 a.m. to around 5 p.m. at each location. A second ballot box for special votes (which also included postal votes) was taken around in each of the four different polling locations by issuing officers and United Nations staff to hospitals and other places. This was done to ensure that all voters who would otherwise have been unable to do so were given the chance to vote.

VI. Result of the referendum

11. The counting of votes was conducted immediately after the scheduled close of the poll on Fakaofo on 15 February 2006. It was conducted in an open and transparent manner and in accordance with the procedures prescribed in the Rules. Sixty per cent of those registered voted in favour of self-government in free association with New Zealand. However, that percentage was not sufficient to meet the required two-thirds majority. A total of 584 voters turned out, with 349 voting in favour and 232 against. Overall voter turnout was 95 per cent. The United Nations monitoring team deemed the election process credible and reflective of the will of the people.

12. On the same day, a handing over ceremony to the new Ulu, the Faipule of Fakaofo, Kolouei O'Brien, took place. In his speech, he said that the result of the referendum had come as a surprise, but that he respected and stood by the decision that a two-thirds majority was needed for a change in status. The Ulu also noted that Tokelau would remain on the United Nations list of Non-Self-Governing Territories but that New Zealand would continue to work with Tokelau to further improve living standards in the Territory and to support any further decisions relating to the Territory's future political status.

13. In his speech, the Administrator, Neil Walter, confirmed that New Zealand respected the result and that it would continue to discharge its obligations as administering Power. Mr. Walter echoed a point, made by the Ulu, namely, that a majority of Tokelauans had voted for change, and said that this would suggest that Tokelau and New Zealand, after a period of reflection, might again wish to engage in a discussion about Tokelau's future status.

14. Ambassador Robert Aisi, representing the Chairman of the Special Committee, assured the Tokelauans that the Special Committee fully respected the referendum vote. Mr. Aisi recalled that the General Assembly, in its resolution 1541 (XV) of 15 December 1960, affirmed that while there were three ways in which a Non-Self-Governing Territory could attain a full measure of self-government, the important point was that the choice had to be the result of the freely expressed wish of the people. Irrespective of the vote, Ambassador Aisi noted that the latter had certainly been the case with Tokelau. He also noted that Tokelau had had a special place on the Committee's agenda for many years. This fact was reflected in the Committee's five visiting missions to the atolls since the mid-1970s, the most visiting missions to any of the remaining Non-Self-Governing Territories on the United Nations list. He recalled that the Committee recognized, and had on many occasions praised, the unique and long-standing active cooperation among Tokelau, New Zealand and the Special Committee. It was an example for other administering Powers and Non-Self-Governing Territories as the exemplary path to follow as the way forward in efforts of decolonization. He reiterated that the Committee had great appreciation for the large amount of work and consideration that preceded Tokelau's decision to hold the referendum. Despite the outcome of the vote, he assured all Tokelauans that the Special Committee would not abandon them, but that it would continue to be by their side and paddle its vaka, or canoe, alongside them.

VII. Post-referendum observations

15. On the morning of 16 February 2006, a referendum post-mortem meeting of the Tokelauan Council took place. Disappointment about the referendum result was expressed. The Ulu noted that the process of reaching the referendum stage had been a joint collaboration between Tokelau and New Zealand, and that all key decisions leading up to the referendum had been taken by unanimous vote at the General Fono. Following the referendum vote, the Council agreed that it was now time for some serious reflection in a spirit of lessons learned. The members of the Council intended to discuss the issues with their villagers. Further consultations would be held at meetings of the General Fono in mid-March and again in May 2006. From the exchange held at the Council meeting, it was clear that the vote was not perceived as the final act of self-determination. In the meantime, the Council agreed that it would request New Zealand to let the referendum package (draft treaty and draft constitution) remain on the table.

16. Two of the Council members questioned the two-thirds majority threshold and whether the bar had been set too high for the referendum to pass. The New Zealand Administrator, however, noted that the threshold had been deemed appropriate by both Tokelau and New Zealand given the importance of the decision. His advice for a possible future vote was not to lower the hurdle, but to jump higher.

VIII. Conclusions and next steps

17. Extensive dialogue and consultations have taken place on Tokelau's future status over the years, and particularly, at the national and village levels, since 2003 when the General Fono took the decision to endorse self-government in free association with New Zealand as the choice to be actively explored with the New Zealand Government. That decision, coupled with the level of agreement from all parties concerned, especially the unanimous support of Tokelau's political leadership at all levels, resulted in the surprise expressed at the outcome of the referendum.

18. The voting pattern in effect turned out to be at odds with the stated views of the political leadership. This raises some questions about the strength of the decisions taken by the traditional leadership. It also suggests that Tokelau, like all places, has its own internal politics and that rivalry among the islands might also have played a role.

19. The positives aspects of the process are that the referendum was conducted in a most professional way and that participation was high. In addition, as noted by the Administrator, nothing prepared you for an act of self-determination like an act of self-determination. The Tokelauans were forced to focus on the issues, with an intensive level of debate and consultation that had not happened before, and 60 per cent did opt for a formal change of status. This provides a good platform from which to move on to a further exercise of self-determination, which the Council has indicated it intends to explore with the three villages and the General Fono in the months to come.

20. The request by the Tokelauan Council for the ongoing Government to keep the current package of the draft constitution and draft treaty on the table has for now

been accepted by the New Zealand Government. At the present stage, no time limit has been placed on the agreement.

21. In the meantime, Tokelau will remain a Non-Self-Governing Territory administered by New Zealand. Statements by all parties — Tokelau, New Zealand and the Special Committee — have confirmed this. In their statements, the Chairman of the Special Committee, the Chairman's representative at the referendum, Ambassador Aisi of Papua New Guinea, and other members of the Committee have emphasized that the Committee will continue to maintain the question of Tokelau under consideration. New Zealand has likewise confirmed its obligation to continue to discharge its obligations as the administering Power.

IX. Acknowledgement

22. The United Nations team wishes to place on record its appreciation to the Government of New Zealand and the Council of Ongoing Government of Tokelau for the courtesies extended to the Special Committee and for the cooperative manner in which the referendum process was carried out. The team would also like to express its thanks to the Tokelau Government and United Nations Development Programme offices in Apia for the hospitality and cooperation extended to it during its stay. Last, but not least, the team also sincerely acknowledges the warmth and generous hospitality extended to it by the people of Tokelau during its short stay on their beautiful islands.